IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2331 of 2004
with
CIVIL APPLICATION No. 8528 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GIRDHARLAL KANJIBHAI VADGAMA

Versus

PRAGJIBHAI GOVINDBHAI PANCHARASANA

Appearance:
1. First Appeal No. 2331 of 2004
MR MRUGEN K PUROHIT for Appellant
MR RC KAKKAD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 23/02/2005

ORAL JUDGEMENT

ADMITTED. Mr. R.C.Kakkad, learned advocate appears and waives service of notice of admission on

behalf of respondent/original applicant.

2. Instant appeal under Section 30 of the Workmen Compensation Act ('the Act' for short) read with Section 96 of the Code of Civil Procedure is directed against the judgement and award dated 16.4.2004 rendered in Workman Compensation Case (Non-Fatal) No. 7 of 1993 (old Case No. 6 of 1989) by the Ex. Officio Commissioner for Workman Compensation and Judge, Labour Court, Jamnagar, by which the application filed by the respondent/workman against the appellant/employer under Section 3 of the Act to receive the compensation on account of amputation of two right hand fingers, during the course of employment of the appellant on 21.9.1988 at 9:00 AM, came to be allowed and thereby the appellant/employer was directed to deposit Rs.49063/= as compensation together with interest @ 6% per annum on the said amount and also penalty @ 50% that is Rs.24,532/= within one month from the date of the said order.

3. Since the matter is amicably settled between the parties, with the consent of the learned advocates appearing for the parties, the matter is taken up for final hearing today.

4. Mr. Mrugen K. Purohit, learned advocate of the appellant/employer and Mr.R.C.Kakkad, learned advocate for the respondent/workman, upon instructions received from the employer and workman, who are personally present in the Court, states that both of them have amicably settled the matter and the said settlement has been put into writing, which bears their signatures and therefore, they urged to dispose of the appeal in terms of the said settlement.

5. The terms and conditions of the amicable settlement arrived at between the parties are as under:

(i) The appellant shall now pay Rs.40,000/= by way of additional amount of compensation, which include the amount of penalty and interest @ 6% per annum, to the respondent on or before 31st of March 2005 and, on receipt of the same, the respondent shall issue the receipt to that effect.

(ii) On receipt of the amount of Rs.40,000/= from the appellant, the respondent shall not be entitled to recover any further amount from the appellant and the respondent shall not file any execution petition before the Workman Compensation

Commissioner and shall also withdraw the application which is pending before the Workman Compensation Commissioner.

(iii) The appellant has already paid Rs.49,063/= as determined by the Workman Compensation Commissioner before filing of the appeal to the respondent and, over and above the said amount, an additional amount of of Rs.40,000/= shall be paid to the respondent and the respondent is satisfied with the said amount and is also binding himself for his claim for the compensation to the said amount. The respondent, now shall not be entitled to recover any further amount from the appellant.

(iv) Out of the agreed additional amount of Rs.40,000/= the appellant has paid Rs.15000/= to the respondent and the receipt to that effect is also issued by the respondent.

(v) The appellant shall pay the remaining amount of Rs.25,000/= on or before 31.3.2005 either in cash or by Demand Draft and the respondent shall also issue the receipt of the said amount.

(vi) The appellant shall also file an undertaking before this court today itself, to the effect that remaining amount of Rs.25,000/= shall be paid on or before 31.3.2005.

(vii) The parties have agreed Rs.40,000/= as a full and final settlement towards compensation to be paid by the appellant to the respondent over and above Rs.49,063/= which has already been paid by the appellant to the respondent before filing of the present First Appeal as a condition precedent as per the statutory provisions.

6. In view of the aforesaid compromise arrived at between the parties, this appeal is required to be disposed of by partly allowing the same.

7. The appeal, therefore, succeeds in part and is accordingly partly allowed with no order as to costs. The award which is impugned in this appeal is modified accordingly in terms of the settlement arrived at between the parties.

8. The modified award be drawn accordingly.

9. Since the appeal is disposed of in terms of the settlement, the Civil Application, which is filed for stay of the impugned judgement and award, now does not assume any survival value, hence the same is also disposed of accordingly with no order as to costs. Notice is discharged.

10. The written consent terms of settlement arrived at between the parties which bears the signatures of the employer and the workman as well as undertaking filed by the employer, shall be retained on record of the case.

(A.M.Kapadia,J)

Jayanti*